

Michelle T. Friend
Joseph Breitenbach
HEDGER FRIEND, P.L.L.C.
2800 Central Avenue, Suite C
Billings, Montana 59102
Phone: (406) 896-4100
Facsimile: (406) 896-4199 – facsimile
mfriend@hedgerlaw.com
jbreitenbach@hedgerlaw.com

Attorneys for Professional Transportation, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION**

HERBERT J. MASON,) Cause No. CV-
)
Plaintiff,)
)
vs.) DEFENDANT'S PETITION AND
) NOTICE OF REMOVAL
PROFESSIONAL)
TRANSPORTATION, INC.,)
An Indiana Corporation,)
)
Defendant.)
)

**TO: THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MONTANA, MISSOULA DIVISION**

Please take notice that pursuant to 28 U.S.C. §§ 1332, 1441(b), and 1446, Defendant Professional Transportation, Inc. (“PTI”) hereby notifies the Court of the removal to this Court of the action styled *Herbert J. Mason v. Professional*

Transportation, Inc., Cause No. DV-18-230C, filed in the Eleventh Judicial District Court, Flathead County, Montana (the “State Court Action”).

Defendant removes this action to the United States District Court on the following grounds: (1) complete diversity of citizenship exists among the named parties in this action; and (2) the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000. 28 U.S.C. §1332(a)(1).

In support of such Petition, Defendant PTI states as follows:

1. On March 8, 2018, Plaintiff Herbert J. Mason, appearing *pro se*, filed his Complaint and Demand for Jury Trial against PTI in the State Court Action. PTI is the only Defendant named in the case. *Id.* On June 17, 2019, Plaintiff, by and through Andrew D. Huppert of the Carey Law Firm, P.C., filed his First Amended Complaint and Demand for Jury Trial (“Amended Complaint”). Pursuant to 28 U.S.C. 1446(a), attached hereto as **Exhibit “A”** is “a copy of all process, pleadings, and orders served upon [PTI]” in the State Court Action.

2. PTI received copies of the Complaint, the Amended Complaint, the Summons, and an acknowledgment and waiver of service from Plaintiff on September 19, 2019. Declaration of Joseph L. Breitenbach, ¶ 2 (October 7, 2019), attached hereto as **Exhibit “B.”** 28 U.S.C. § 1446(b)(1) provides that “[t]he notice of removal of a civil action or proceeding shall be filed within 30 days after receipt by the defendant, through process or otherwise, of a copy of the initial

pleading setting forth the claim for relief upon which such action or proceeding is based[.]” Removal is thus timely under 28 U.S.C. § 1446(b), as less than 30 days have passed since PTI received notice of the Summons and Amended Complaint.

3. PTI acknowledged service of Plaintiff’s Amended Complaint on October 4, 2019. *See Acknowledgment and Waiver of Service of Summons*, a copy of which is attached hereto as **Exhibit “C.”**

4. Plaintiff alleges in his Amended Complaint that he resides in Somers, Flathead County, Montana. Amended Complaint, ¶ 1. Accordingly, Plaintiff is a citizen and resident of the State of Montana.

5. At the time of the filing of the Amended Complaint and currently, Defendant PTI is an Indiana corporation with its principal place of business located in Evansville, Indiana. Amended Complaint, ¶ 2. Defendant PTI is a citizen and resident of the State of Indiana, and is therefore a citizen of a state other than Montana within the meaning of 28 U.S.C. § 1332(a). Complete diversity of citizenship of the parties exists.

6. Based upon information and belief, the amount in controversy in this case, exclusive of interest and costs, exceeds \$75,000.00. Plaintiff brings his claims against PTI under Montana’s Wrongful Discharge from Employment Act, 39-2-901, et seq. Pursuant to the Act, a claimant may be awarded lost wages and fringe benefits for a period not to exceed 4 years from the date of discharge. Mont.

Code Ann. § 39-2-905(1). Plaintiff alleges that he received total earnings and fringe benefits of \$74,143.21 the year prior to his termination. Amended Complaint, ¶ 6. Four years at Plaintiff's alleged yearly wage loss totals approximately \$296,572.84. Plaintiff also seeks punitive damages.

7. This case is a civil action of which this Court has original jurisdiction pursuant to 28 U.S.C. § 1332, and is one which may be removed to this Court pursuant to the provisions of 28 U.S.C. § 1441, in that it is a civil action between citizens of different states and the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs. Thus, this action is removable on the basis of diversity jurisdiction pursuant to 28 U.S.C. §§ 1332 and 1441.

8. Removal to the Missoula Division of the United States District Court for the District of Montana is proper because the State Court Action was filed in this Court's district in the County of Flathead. *See* Local Rule 1.2(c)(4).

9. Pursuant to 28 U.S.C. § 1446(d), a copy of this Petition and Notice of Removal is being filed with the Clerk of Court for the Eleventh Judicial District of Montana, Flathead County. *See* Notice of Removal attached as **Exhibit “D.”**

DATED this 7th day of October, 2019.

HEDGER FRIEND, P.L.L.C.

By: /s/ Joseph L. Breitenbach
Attorney for Professional Transportation, Inc.

CERTIFICATE OF SERVICE

I, the undersigned, a representative of the law firm of Hedger Friend, P.L.L.C., hereby certify that I served a true and complete copy of the foregoing “DEFENDANT’S PETITION AND NOTICE OF REMOVAL” on the following persons by the following means:

1 CM/ECF
 Hand Delivery
2, 3 Mail
 Overnight Delivery Service
 Fax
 E-Mail

1. Clerk, U.S. District Court
2. Clerk of Court Flathead County
3. Andrew Huppert
CAREY LAW FIRM, P.C.
225 W. Broadway
P.O. Box 8659
Missoula, MT 59807-8659

DATE: October 7, 2019

/s/ Joseph L. Breitenbach